

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 166 OF 2003

STATE

... Applicant.

versus

Smt. Rita Barboza,
r/o Colva, Vanelim,
Green Acaus Building,
2nd Floor, Room No.S/3,
Colva, Vanelim.

... Respondent.

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mr. R. Tilve, Advocate for the Respondent.

CORAM: P. V. HARDAS, J.

DATED: 7TH AUGUST, 2003.

ORAL JUDGMENT

The Applicant/State being aggrieved by the Judgment of the Judicial Magistrate First Class, Margao, dated 30th October, 2002, in Criminal Case No.276/S/2000/D, acquitting the Respondent/Accused for an offence punishable under Sections 353 and 504 of the Indian Penal Code has filed the present application for leave to file Appeal against acquittal.

2. The prosecution had alleged that on 3rd November, 2000, at about 10.30 a.m. at Colva Post Office, the Respondent/Accused had slapped the Complainant, P.W.2, Shri Mangaldas, Naik and also that the Respondent/Accused had abused the Complainant in filthy language. The Respondent/Accused had pleaded not guilty and had claimed to be tried. The prosecution in support of its case examined eight witnesses.

3. The learned Trial Court found that there were major discrepancies in the evidence of P.W.2, Mangaldas Naik, P.W.3, Ulhas Prabhu Gaunkar, P.W.5, Harischandra Dalal and P.W.7, Xavier D'Souza. The learned Trial Court after appreciating the evidence of the aforesaid witnesses came to the conclusion that it was highly unsafe to rely on the testimonies of these witnesses and, therefore, gave benefit of doubt to the Respondent/Accused in respect of the offence punishable under Section 353 of the Indian Penal Code. In respect of the offence punishable under Section 504 of the Indian Penal Code, the learned Trial Court found that the Complainant, P.W.2, Mangaldas Naik, in his report at Exh.PW2/A had not referred to the exact abuses alleged to have been given by the Respondent/Accused. The learned Trial Court also found that the evidence of the other witnesses was not

consistent with the exact words used by the Respondent/Accused. The learned Trial Court also found that there was absolutely no motive alleged by the prosecution for the Respondent/Accused to have committed the aforesaid act. In the background of the evidence adduced by the prosecution, the learned Trial Court, therefore, acquitted the Respondent/Accused.

4. I have heard Mr. S. N. Sardessai, learned Public Prosecutor for the State and Mr. R. Tilve, learned Counsel for the Respondent. With the assistance of the learned Counsel, I have perused the evidence which has been made available to me. The view taken by the learned Trial Court is a possible view on the basis of the evidence on record and there is no perversity in the appreciation of evidence of the learned Trial Court so as to warrant any interference in this application. There is absolutely no merit in the present application for leave and, therefore, Criminal Miscellaneous Application No. 166 of 2003 is dismissed. Leave refused.

P. V. HARDAS, J.

RD.